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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,288	10/31/2003	James W. Schmitkons	NOR-1109	2565

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WOOD, HERRON & EVANS, LLP (NORDSON)  
2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OH 45202

EXAMINER

SMITH, JOHNNIE L

ART UNIT PAPER NUMBER

2881

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/699,288

Applicant(s)

SCHMITKONS ET AL.

Examiner

Johnnie L. Smith II

Art Unit

2881

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection:  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 09/02/05 have been fully considered but they are not persuasive. Applicant argues that Cook et al does not teach having focus position and flood position of a lamp and that Cook does not show functioning in a focused condition. As stated in the response to previous arguments, figures 3A-C of Cook shows the shuttering system wherein the system is adjusted to three different positions. The first being more of a compact position whereas the third having a greater width than that first and second. The examiner notes that beam direction of the first position differs from that of the third in that the third position has more of a focused beam array. Therefore the examiner feels that the disclosure of Cook meet the limitation being claimed since it is depicted in the figures, listed above, that Cook's apparatus is capable of selectively emitting radiation in either flood (3A) or focused (3C) position. As a further example the examiner makes reference to US patent 6,619,819 (Stowell et al). The said US patent a similar apparatus is disclosed (see figures). And in reference to the said figures, Stowell teaches focusing of the said apparatus (column 6 line 51 through column 7 line 10). Both apparatuses (Stowell and Cook) operate in the same manner and therefore are considered art equivalents. Which as stated above shows applicant's limitation of being in the flood position and focused position. The examiner also feels that figures 3A and 3B shows a relatively elliptical reflective body. Applicant further argues that the rejection lack motivation to include stop members. The examiner contends that Cook teaches a shuttering system wherein said first and second reflective bodies move in respective paths of movement for the purpose of varying the amount of radiation that reaches the substrate as discussed above. Cook teachings of such a system, as discussed above, do not require a secondary reference with regards to the applicant's included stop members because Cook's reflective shutters are capable of performing equivalent functions. .



JOHN R. LEE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800